

REMARKS

Pursuant to the telephone conversation between the Examiner and Applicants' counsel on February 16, 2010, Applicants hereby re-submit claim amendments and arguments originally presented on November 13, 2009.

Claims 1, 3-22, 37, 38, 43-45, 66, 84-88, 108, 119-126 and 128-132 were pending in the application. Claims 84-88, 108, and 119-126 were pending and withdrawn. Claims 2, 15, 16, 23-36, 39-42, 46-65, 84-88, 108 and 119-126 have been canceled. Claims 1, 3, 9, 17-20, 37 and 128 have been amended. Accordingly, upon entry of the amendments presented herein, claims 1, 3-14, 17-22, 37, 38, 43-45, 66 and 128-132 will be pending.

Claims 1, 3, 9, and 17-20 have been amended by the removal of substituent definitions. Claims 37 and 128 have been amended to reassign dependencies.

No new matter has been added.

The foregoing claim amendments have been made solely for the purpose of expediting prosecution of the present application and should in no way be construed as acquiescence to any of the Examiner's rejections in this or in any other Office Action issued in the present application. Applicants reserve the right to pursue the subject matter of the present claims prior to being amended herein in this application or in another related application.

In view of the foregoing claim amendments and the arguments set forth below, Applicants respectfully submit that the claims are now in condition for allowance.

Telephone Interview with Examiner

Applicants appreciate the Examiner's willingness to discuss this application with Applicants' representative over the telephone on November 12, 2009. As discussed during that conference, Applicants have canceled all method of treatment claims in this Supplemental Amendment.

Double Patenting

Claims 1, 3-22, 43 and 66 have been rejected provisionally on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-5 and 10 of copending U.S. Patent Application No. 10/657,910 ("the '910 application"). In response, Applicants note that both the instant application and the '910 application claim the benefit under 35 U.S.C. § 120

of international application PCT/US03/07377 (“the ‘377 application”), filed March 7, 2003. Whereas the instant application is the 35 U.S.C. § 371 national phase entry of the ‘377 application, the ‘910 application is a continuation-in-part of the ‘377 application. Moreover, Applicants note that according to MPEP § 804(I)(B)(1), “[i]f both applications are filed on the same day, the examiner should determine which application claims the base invention and which application claims the improvement (added limitations). The ODP rejection in the base application can be withdrawn without a terminal disclaimer, while the ODP rejection in the improvement application cannot be withdrawn without a terminal disclaimer.”

Applicants respectfully submit for the Examiner’s consideration that the instant application claims the base invention, whereas the ‘910 application claims the improvement insofar as it includes claims with the added limitation “systemic administration.” Moreover, a terminal disclaimer over the instant application was filed during prosecution of the ‘910 application on May 7, 2009. Therefore, it is appropriate to withdraw the outstanding double patenting rejection of the instant application.

Accordingly, Applicants respectfully request that the obviousness-type double patenting rejection be reconsidered and withdrawn.

CONCLUSION

In view of the foregoing, entry of the amendments and remarks herein, reconsideration and withdrawal of all rejections, and allowance of the instant application with all pending claims are respectfully solicited. If a telephone conversation with Applicants' attorney would help expedite the prosecution of the above-identified application, the Examiner is urged to call Applicants' attorney at (617) 227-7400.

If any additional fees are due, please charge our Deposit Account No. 12-0080, under Order No. EISN-018US from which the undersigned is authorized to draw.

Dated: February 17, 2009

Respectfully submitted,

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